

## MAJOR POLICY SHIFTS

### 2002

**H.B. 2393**

The Florida legislature added the option of a defined contribution plan alongside the existing defined benefit plan.

### 2011

**S.B. 2100**

The Florida legislature raised the employee contribution rate from 0% to 3% and eliminated future cost-of-living adjustments.

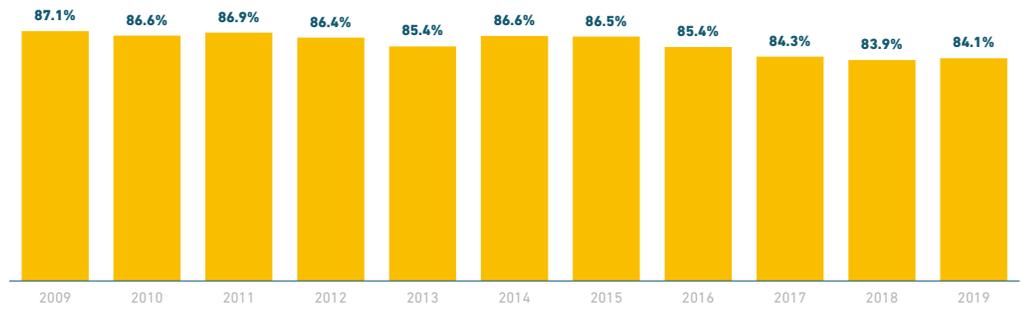
### 2017

**S.B. 7022**

The Florida Legislature changed the default plan for employees from defined benefit to defined contribution.

## FUNDED RATIO

The graphic below covers the Florida Retirement System (FRS).



## LEGAL ENVIRONMENT FOR FUTURE POLICY EFFORTS

Legislative efforts confined to new hires are excluded from analysis because they rarely face significant legal challenges.

What are some policy options?	Were there relevant policy shifts for active employees or retirees?	Have there been legal challenges?	What are the legal prospects for future changes?*
<b>INCREASE EMPLOYEE CONTRIBUTIONS</b>	<b>YES</b> S.B. 2100 (2011)	<b>YES</b> Survived legal challenge in Scott v. Williams (2013)	<ul style="list-style-type: none"> <li><b>FAVORABLE</b> as to active employees for prospective changes only</li> <li><b>N/A</b> as to retirees</li> </ul>
<b>DECREASE OR ELIMINATE COST-OF-LIVING ADJUSTMENTS</b>	<b>YES</b> S.B. 2100 (2011)	<b>YES</b> Survived legal challenge in Scott v. Williams (2013)	<ul style="list-style-type: none"> <li><b>FAVORABLE</b> as to active employees for prospective changes only</li> <li><b>UNFAVORABLE</b> as to retirees</li> </ul>
<b>CHANGE VESTING PERIOD</b>	<b>NO</b>	<b>NO</b>	<ul style="list-style-type: none"> <li><b>FAVORABLE</b> as to active, unvested employees</li> <li><b>N/A</b> as to active, vested employees and retirees</li> </ul>
<b>CHANGE BENEFIT CALCULATION</b>	<b>NO</b>	<b>NO</b>	<ul style="list-style-type: none"> <li><b>FAVORABLE</b> as to active employees for prospective changes only</li> <li><b>UNFAVORABLE</b> as to retirees</li> </ul>

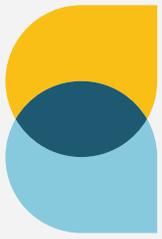
\* **FAVORABLE** indicates that the issue survived litigation in the past and/or there is a permissive legal environment for the change.  
 \* **UNFAVORABLE** indicates that the issue did not survive litigation in the past and/or there is a non-permissive legal environment the change.  
 \* **UNDEVELOPED** indicates that the issue has not been litigated and/or the current legal environment is unclear as to what the outcome would be.



FLORIDA

# LEGAL ENVIRONMENT FOR PENSION POLICIES

As of December 2020



## FLORIDA STATE LAW CONTEXT

### State Provisions

**ARTICLE I, SECTION 6 OF THE FLORIDA CONSTITUTION** provides that “[t]he right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.”

**ARTICLE I, SECTION 10 OF THE FLORIDA CONSTITUTION** provides that “[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.”

**ARTICLE X, SECTION 6(A) OF THE FLORIDA CONSTITUTION** provides that “[n]o private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.”

**FLA. STAT. §121.011(3)(D)** provides that “[t]he rights of members of the retirement system established by this chapter shall not be impaired by virtue of the conversion of the Florida Retirement System to an employee noncontributory system. As of July 1, 1974, the rights of members of the retirement system established by this chapter are declared to be of a contractual nature, entered into between the member and the state, and such rights shall be legally enforceable as valid contract rights and shall not be abridged in any way” (the preservation of rights clause).

### Key Opinions

**FLORIDA SHERIFFS ASS'N V. DEPT. OF ADMIN., 408 SO.2D 1033 (FLA. 1981)**

Special risk law enforcement members of the FRS challenged 1978 Florida legislation prospectively reducing a special risk credit previously added to plaintiffs' retirement benefits. The Florida Supreme Court stated that enactment of the preservation of rights clause in 1974 (Fla. Stat. § 121.011(3)(d)) withdrew the legislature's pre-existing power to alter retirement benefits of current employees, and that “the legislature may now only alter retirement benefits prospectively” affecting benefits that have not yet been earned. *Florida Sheriffs Ass'n v. Dept. of Admin.*, 408 So.2d at 1037. The court upheld the challenged legislation because it only reduced the risk credit after the law went into effect in 1978 and did not take away special risk credits plaintiffs had previously earned.

**SCOTT V. WILLIAMS, 107 SO.3D 379 (FLA. 2013)**

Public employee members of the FRS prior to July 11, 2011 challenged 2011 pension legislation (1) changing the retirement system from a non-contributory to a contributory plan and (2) eliminating COLAs on benefits earned after July 11, 2011. Following the logic of the *Florida Sheriffs* decision, the Florida Supreme Court held that the changes were “prospective changes within the authority of the Legislature to make.” *Scott v. Williams*, 107 So.3d at 389. The court also ruled that the contracts clause protects accrued benefits—“benefits already earned”—but not “benefits for future service,” including benefits of new employees and those of existing employees that had not yet accrued. *Id.* at 388–89. The court rejected the lower court's conclusion that the *Florida Sheriffs* decision applied only to noncontributory pension plans, ruling that the same principles apply to contributory as well as noncontributory plans. This decision was closely divided. Three of seven justices dissented, arguing that the preservation of rights clause had transformed the employees' pre-existing pension benefits into an express contract that the 2011 legislation substantially impaired in violation of the contracts clause.

### FOR MORE INFORMATION

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